No. 281. 46

Answer to motion for Bond.

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Filed Nov. 14, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 281.

THE CITY OF NEW ORLEANS, PETITIONER,

vs.

JOHN FISHER, TUTOR, ETC., ET AL.

Opposition to Motion of Respondents for the Furnishing of a Bond.

SAMUEL L. GILMORE,
City Attorney,
JAMES J. McLAUGHLIN,
BRANCH K. MILLER,
Solicitors for Petitioner.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 11-14-'99

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 281.

CITY OF NEW ORLEANS, PETITIONER,

versus

JOHN FISHER ET AL.

Certiorari to the Court of Appeals for the Fifth Circuit.

Now comes The City of New Orleans, petitioner, and opposes the motion of respondents for the furnishing of a bond in the sum of one hundred and fifty dollars, made November 13th, 1899, on the following grounds, to wit:

First. That respondents have proceeded to the execution of the decree of the circuit court in this cause by the only mode in which the execution of the same can be enforced, namely, by mandamus against the Board of Liquidation of the City Debt, to compel it to sell constitutional bonds, under the terms of the acts of the General Assembly of the State of Louisiana, No. 67 of 1884 and 110 of 1890; that from a judgment of the circuit court making said mandamus peremptory for the sum of seventy-one thousand nine hundred and thirty-eight

and $\frac{78}{100}$ dollars, the said Board of Liquidation has carried the said judgment, for review, to the court of appeals for the fifth circuit by writ of error, which is still now pending and undetermined, and for which it has furnished a bond in said circuit court for the sum of eighty thousand dollars.

All of which is more fully shown by a duly certified copy of the order granting said writ of error, of the said bond so furnished, and the certificate of the clerk of the said court of appeals to the effect that the said writ of error is still pending and undecided in the said court.

Second. That there is no law or rule of practice which requires the petitioner in a proceeding in certiorari to furnish any bond for the granting of such a writ; that if the court should deem that it may, in its discretion, order the furnishing of said bond, this case is not one in which such discretion should be so exercised.

Third. That respondents have resorted to act No. 110 of the General Assembly of the State of Louisiana of 1890 for the enforcement of the decree herein in their favor; that they conceive themselves entitled to compel the sale of a sufficient number of constitutional bonds issued under said act No. 110 of 1890 to pay and satisfy the said decree; that although the Board of Liquidation of the City Debt has resisted the petition for a mandamus aforesaid to compel it to sell constitutional bonds for such purpose, on the ground principally that the decree in favor of defendants has no standing under said statute, respondents having proceeded under said act, should they be entitled to any relief afforded by it, there remain unissued a number of bonds more than sufficient to pay and satisfy the said decree.

All as is more fully shown by the affidavit of the secretary of the said board, to the effect that out of the maximum issue of ten million dollars of bonds authorized by the said act, only nine millions eight thousand five hundred dollars have been issued, and there at present remain unissued nine

hundred and ninety-one thousand five hundred dollars of said bonds; which statement is filed herewith as part hereof.

SAMUEL L. GILMORE,
City Attorney,

JAMES J. MCLAUGHLIN,

BRANCH K. MILLER,
Solicitors for Petitioner.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally came and appeared Terence Wolfe, Jr., who, being duly sworn, deposes and says:

That he is the secretary of the Board of Liquidation of the City Debt; that he has personal knowledge of the amount of constitutional bonds authorized by act No. 110 of the General Assembly of the State of Louisiana of 1890; that all bonds issued are delivered by affiant, for the said board, to the parties entitled to receive them; that of the ten million dollars of bonds authorized by the said act, only nine millions eight thousand five hundred dollars have been so far issued, and there remain unissued at present nine hundred and ninety-one thousand five hundred dollars of said bonds.

T. WOLFE, JR.

Sworn to and subscribed before me on this 10th day of November, A. D. 1899.

J. C. HENRIQUES,
[SEAL.] *Notary Public.*

[Endorsed:] Original. Supreme Court of the United States, October term, 1899. No. —. City of New Orleans, petitioner, *versus* John Fisher *et al.* Certiorari to the court of appeals for the fifth circuit. Branch K. Miller, notary.

Know all men by these presents that we, The Board of Liquidation of the City Debt, as principal, and The American Surety Company of New York, a corporation created by the laws of New York, as surety, are held and firmly bound unto John Fisher, tutor of his minor children, John B. Fisher, James M. Fisher, William G. Fisher, and R. B. Fisher; U. Koen and U. Koen & Company, F. J. Gasquet, Mary Quinlan, Jean Pomes, G. T. Young, Mrs. Mary Fortier, Mrs. A. B. Gage, and E. F. Duclaux in the full and just sum of eighty thousand dollars, to be paid to the said John Fisher, tutor of said minors; U. Koen and U. Koen & Company, F. J. Gasquet, Mary Quinlan, Jean Pomes, G. T. Young, Mrs. Mary Fortier, Mrs. A. B. Gage, and E. F. Duclaux, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a circuit court of the United States for the fifth circuit and eastern district of Louisiana, in a suit depending in said court between said John Fisher, tutor of his minor children, John B. Fisher, James M. Fisher, William G. Fisher, and R. B. Fisher, and U. Koen and U. Koen & Company, F. J. Gasquet, Mary Quinlan, Jean Pomes, G. T. Young, Mrs. Mary Fortier, Mrs. A. B. Gage, and E. F. Duclaux, relators, and The Board of Liquidation of the City Debt, defendant, a judgment was rendered against the said Board of Liquidation, defendant, and the said Board of Liquidation of the City Debt having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Fisher, tutor of his said minor children, and U. Koen, U. Koen & Company, F. J. Gasquet, Mary Quinlan, Jean Pomes, G. T. Young, Mrs.

Mary Fortier, Mrs. A. B. Gage, and E. F. Duclaux, citing and admonishing them to be and appear before the United States court of appeals for the fifth circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Board of Liquidation of the City Debt shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE BOARD OF LIQUIDATION OF THE CITY DEBT,
By R. M. WALMSLEY, *Pres't.* [SEAL.]
AMERICAN SURETY CO. OF NEW YORK,
By A. A. MAGINNIS, [SEAL.]
1st Res't Vice-President.
PETER F. PESCUD, [SEAL.]
Res't Ass't Sec'y.

Sealed and delivered in presence of—
—— ——.

This bond approved, to act as a supersedeas.
(Signed) CHARLES PARLANGE, *U. S. Judge.*

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of said court, at the city of New Orleans, State of Louisiana, this 10th day of November, A. D. 1899.

[SEAL.] E. R. HUNT, *Clerk,*
By H. J. CARTER, *Deputy Clerk.*

[Endorsed:] No. 12740. U. S. *ex rel.* John Fisher *et als. vs.* Board of Liquidation of City Debt. Bond.

UNITED STATES CIRCUIT COURT, FIFTH CIRCUIT, EASTERN DISTRICT OF LOUISIANA.

UNITED STATES *ex Rel.* JOHN FISHER, *Tutor*, *et als.*
vs.
BOARD OF LIQUIDATION CITY DEBT. } No. 12740.

On this 24th day of June, 1898, came the defendant, by its attorney, and filed herein and presented to the court its petition praying for the allowance of the writ of error intended to be urged by it; also that a transcript of the proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States circuit court of appeals for the fifth judicial circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ of error, returnable in thirty days, upon defendant giving bond, according to law, in the sum of eighty thousand dollars, which shall operate as a supersedeas bond.

Done in open court June 24th, 1898.

(Signed) CHARLES PARLANGE,
U. S. Judge.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of said court, at the city of New Orleans, La., this 10th day of November, A. D. 1899.

[SEAL.] E. R. HUNT, *Clerk*,
By H. J. CARTER.

[Endorsed:] No. 12740. U. S. circuit court, eastern district of Louisiana. United States *ex rel.* John Fisher, tutor, *et als. vs.* Board of Liquidation City Debt. Copy of order allowing writ of error.

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH JUDICIAL CIRCUIT.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that cause No. 746, wherein The Board of Liquidation of the City Debt of New Orleans is plaintiff in error and The United States *ex rel.* John Fisher, tutor, *et als.* are defendants in error, said cause having been brought into the United States circuit court of appeals for the fifth circuit on writ of error to the United States circuit court for the eastern district of Louisiana, is still pending and undetermined in said United States circuit court of appeals.

I do further certify that, as appears from the records of my office, said cause was numbered in said circuit court No. 12740.

In testimony whereof I hereby subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this the 10th day of November, A. D. 1899.

[SEAL.] J. M. McKEE.
Clerk of U. S. Circuit Court of Appeals,
Fifth Circuit.